

No. 4431

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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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E. H. BARBER, United States Naval Disbursing  
Officer,

Appellant,

vs.

WILLIAM BRAUNER HETFIELD,

Appellee.

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Transcript of Record.

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Upon Appeal from the United States District Court for  
the Southern District of California,  
Southern Division.

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FILED

DEC 29 1924

F. D. MONKTON



No.

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Circuit Court of Appeals  
For the Ninth Circuit.

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vs.

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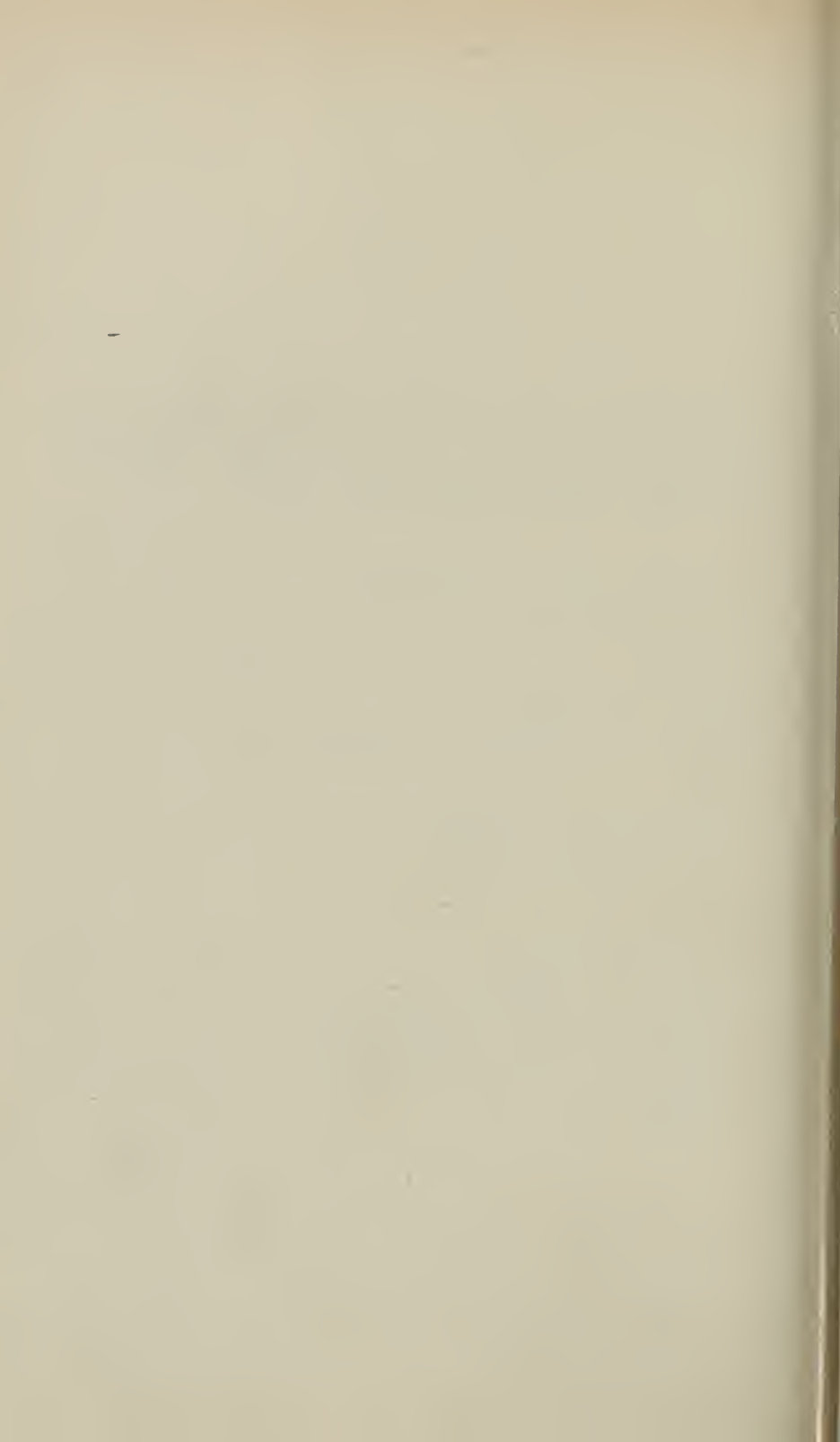
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original record are printed literally in italic; and, likewise, cancelled matter appearing in the original record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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**Names and Addresses of Attorneys.**

For Respondent and Appellant:

JOSEPH C. BURKE,

United States Attorney, Los Angeles, California.

J. EDWIN SIMPSON,

Assistant United States Attorney, Los Angeles,  
California.

O. R. McGUIRE,

Special Assistant to the Attorney General,  
Washington, D. C.

For Petitioner and Appellee:

MOORE & FARRAHER,

JAMES H. FARRAHER,

1221 Pacific Mutual Building, Los Angeles,  
California.

IN THE DISTRICT COURT OF THE UNITED  
STATES IN AND FOR THE SOUTHERN  
DISTRICT OF CALIFORNIA SOUTH-  
ERN DIVISION

|                              |   |                   |
|------------------------------|---|-------------------|
| WILLIAM BRAUNER HET-         | ) |                   |
| FIELD,                       | ) |                   |
|                              | ) | Petitioner,       |
|                              | ) | vs.               |
| E. H. BARBER, United States) | ) | No. I-13-M Equity |
| Naval Disbursing Officer,    | ) | CITATION          |
| Respondent.                  | ) |                   |

UNITED STATES OF AMERICA, ss:

THE PRESIDENT OF THE UNITED STATES  
TO WILLIAM BRAUNER HETFIELD,

GREETING :

TO WILLIAM BRAUNER HETFIELD:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit at the City of San Francisco, in the State of California, within thirty days from the service of this Citation, pursuant to an Appeal duly allowed by the District Court of the United States in and for the Southern District of California and filed in the Clerk's Office of said Court on the 12th day of December, 1924, in a cause numbered I-13-M Equity, wherein E. H. BARBER is appellant and you, appellee, to show cause, if any, why the order rendered against the said appellant as in said Appeal mentioned, should not be corrected and why speedy justice should not be done to the party in that behalf.



WITNESS the Honorable Paul J. McCormick, Judge of the District Court of the United States in and for the Southern District of California, this 12th day of December, 1924, and of the Independence of the United States the One-hundred forty-ninth.

Paul J. McCormick

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United States District Judge  
SERVICE OF THE WITHIN CITATION and receipt of a copy is hereby admitted this 12th day of December, 1924.

(ENDORSED):

No. I-13-M Equity IN THE DISTRICT COURT OF THE UNITED STATES FOR THE Southern District of California Southern Division WILLIAM BRAUNER HETFIELD Petitioner vs. E. H. BARBER, United States Naval Disbursing Officer, Respondent CITATION FILED DEC 12, 1924 CHAS. N. WILLIAMS, Clerk By L. J. Cordes, Deputy Clerk.  
Moore and Farraher

---

Attorney for Appellee

IN THE DISTRICT COURT OF THE UNITED  
STATES SOUTHERN DISTRICT OF CALI-  
FORNIA SOUTHERN DIVISION

---

|                             |   |              |
|-----------------------------|---|--------------|
| WILLIAM BRAWNER HET-        | ) |              |
| FIELD,                      | ) |              |
|                             | ) | PETITIONER,  |
|                             | ) | PETITION FOR |
| -vs-                        | ) | WRIT OF      |
| E. H. BARBER, United States | ) | MANDAMUS     |
| Naval Disbursing Officer,   | ) |              |
| Respondent.                 | ) |              |

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TO THE HONORABLE JUDGE OF THE DIS-  
TRICT COURT OF THE UNITED STATES OF  
THE SOUTHERN DISTRICT OF CALIFORNIA,  
SOUTHERN DIVISION:

The petition of William Brawner Hetfield respect-  
fully shows:

I.

That petitioner is now and at all times herein men-  
tioned was a citizen of the United States and a resident  
of this Judicial District, and a duly commissioned and  
acting Lieutenant Commander of the United States  
Navy.

II.

That E. H. Barber is the Disbursing Officer of the  
United States Navy for the Eleventh Naval District,  
which includes the City and County of Los Angeles,  
California, with his office at San Diego, California.

III.

That as such officer of the United States Navy,  
petitioner is entitled to receive as pay or salary, inde-

pendent of any claims for dependency of relatives, the monthly sum of Three Hundred Sixty-five Dollars and Seventy-five cents (\$365.75).

## IV.

That on May 22, 1924, petitioner was informed in writing by the Comptroller General, through his Solicitor, that on March 17, 1924, it had been found that petitioner had erroneously been paid the sum of Two Thousand Eight Hundred and Seventy Dollars and Seventy-one cents (\$2870.71), for what was termed "alleged dependency by you (petitioner) of your (petitioner's) mother for a period from April 22, 1919 to March 31, 1922," and said communication contained a demand upon petitioner for the payment of said sum to the United States government; that petitioner refused to pay said sum on the ground that the dependency allowances referred to in said communication had been applied for in good faith by petitioner and been approved by the proper accounting officers and properly paid to petitioner.

## V.

That thereafter said E. H. Barber, Disbursing Officer, refused to pay to petitioner any portion of his pay or compensation as Naval Officer, and has refused to pay the dependency allowance for which petitioner filed affidavits in proper form.

## VI.

That said Disbursing Officer gave as his reason for refusing to pay petitioner his compensation fixed by the United States Statute, that petitioner was indebted to the United States in the amount of Two Thousand

Eight Hundred and Seventy Dollars and Seventy-one cents (\$2870.71), and that no money is to be paid to petitioner on account of his compensation as such Naval Officer until he had either paid the said amount, or the compensation withheld had offset said amount. That said condition continued until the 15th day of August, 1924, when said Disbursing Officer paid eighty (80%) per cent of the compensation earned by petitioner, as fixed by the United States Statutes, from April 1st to said August 15th, 1924, but said Disbursing Officer refused to pay the remaining twenty (20%) per cent to petitioner.

-VII-

That the said twenty (20%) per cent so withheld by said Disbursing Officer from April 1, 1924 to September 15, 1924, amounts to Four Hundred and Two Dollars and Thirty-five cents (\$402.35), which said amount petitioner is now entitled to receive.

-VIII-

That petitioner is informed and believes, and therefore alleges, that unless by this court compelled to pay the full salary and compensation of petitioner hereafter, said Disbursing Officer will continue to withhold twenty (20%) per cent thereof.

-IX-

That petitioner has frequently demanded of said Disbursing Officer payment of the sum so withheld, but has on each occasion met with refusal of said officer.

-X-

That the ordinary legal remedies do not afford petitioner adequate relief, and that petitioner has not here-

tofore sought from this court, or any other court, a Writ of Mandamus in this cause.

WHEREFORE, petitioner prays that the Judge of this court order the issuance of an alternative Writ of Mandamus demanding and directing the said E. H. Barber, United States Naval Disbursing Officer, Eleventh Naval District, to forthwith pay to petitioner the amount of Four Hundred and Two Dollars and Thirty-five cents (\$402.35), with interest thereon, and costs, said amount being twenty (20%) per cent of petitioner's pay as Lieutenant Commander of the United States Navy, from the 1st day of April, 1924 to the 15th day of September, 1924, and to hereafter pay to petitioner on each and every payday thereafter, the full amount of the petitioner's compensation as fixed by the United States Statutes, or to appear before this court on the day to be named in said Writ to show cause, if any there be, why a peremptory Writ of Mandamus should not issue to compel the said payments.

And for such further and general relief as petitioner may be entitled to in the premises.

MOORE & FARRAHER

---

ATTORNEYS FOR PETITIONER

STATE OF CALIFORNIA    )  
                                          ) SS:  
COUNTY OF LOS ANGELES )

WILLIAM BRAWNER HETFIELD, being first duly sworn, deposes and says:

That he is the plaintiff in the above entitled action;

that he has read the foregoing complaint, knows the contents thereof, and the same is true of his own knowledge, except as to matters therein stated on information or belief, and as to those matters that he believes it to be true.

WILLIAM BRAUNER HETFIELD

---

Subscribed and sworn to before me  
this 15th day of September, 1924.

FRANCES STOEKER (Seal)

---

NOTARY PUBLIC IN AND FOR  
THE COUNTY OF LOS ANGELES,  
STATE OF CALIFORNIA.

IN THE DISTRICT COURT OF THE UNITED  
STATES  
SOUTHERN DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION.

---

|                                   |               |
|-----------------------------------|---------------|
| WILLIAM BRAUNER HETFIELD,         | )             |
|                                   | Petitioner, ) |
|                                   | )             |
| -vs-                              | )             |
| E. H. BARBER, United States Naval | )             |
| Disbursing Officer,               | )             |
|                                   | Respondent. ) |

---

BRIEF OF AUTHORITIES IN SUPPORT OF  
PETITION FOR WRIT OF MANDATE

Government accounting officers cannot under the law  
check disputed items against salaries fixed by Statute.

SMITH VS. JACKSON, 241 Fed. 746.

(Affirmed 246 U. S. 388).

ALSO:

DILLON VS. GROSS 299 Fed. Rep. p. 81.

United States Naval Disbursing Officer cannot check against the salaries of Naval Officers for any amounts claimed by the Disbursing Officer to be due the government on account of overpayment of dependency allowances.

DILLON VS. GROSS 229 Fed. Rep. p. 851;

Opinion of Attorney General 20 Op. Atty Gen  
626.

(Endorsed):

I 13 M IN THE DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION. WILLIAM BRAWNER HETFIELD Petitioner -vs- E. H. BARBER, United States Naval Disbursing Officer Respondent. PETITION FOR WRIT OF MANDAMUS FILED SEP 24 1924 CHAS. N. WILLIAMS, Clerk by L. J. Cordes Deputy Clerk MOORE & FARRAHER PACIFIC MUTUAL BUILDING LOS ANGELES ATTORNEYS FOR PETITIONER.

IN THE DISTRICT COURT OF THE UNITED  
STATES SOUTHERN DISTRICT OF CALI-  
FORNIA SOUTHERN DIVISION.

---

|                             |   |              |
|-----------------------------|---|--------------|
| WILLIAM BRAWNER HET-        | ) |              |
| FIELD,                      | ) | ORDER GRANT- |
|                             | ) | ING ALTERNA- |
| Petitioner,                 | ) | TIVE WRIT OF |
| -vs-                        | ) | MANDAMUS     |
| E. H. BARBER, United States | ) |              |
| Naval Disbursing Officer,   | ) |              |
| Respondent.                 | ) |              |

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Petition for Writ of Mandamus in the above entitled matter having this day been filed, and after reading the same, and on motion of James Farraher, one of the attorneys for the petitioner, William Brawner Hetfield,

IT IS ORDERED that the Clerk of this court issue the alternative Writ of Mandamus in accordance with the prayer of said petition. returnable before me, October 13th 1924 at 10 o'clock AM. in the Federal Building at Los Angeles California.

Dated: September 30th, 1924.

Paul J. McCormick

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JUDGE OF THE ABOVE ENTITLED COURT  
(ENDORSED)

I 13 M IN THE DISTRICT COURT OF THE  
UNITED STATES SOUTHERN DISTRICT OF  
CALIFORNIA SOUTHERN DIVISION WIL-  
LIAM BRAWNER HETFIELD, Petitioner, -vs-  
E. H. BARBER, United States Naval Disbursing



Officer, Respondent. ORDER GRANTING ALTERNATIVE WRIT OF MANDAMUS FILED SEP 30 1924 CHAS. N. WILLIAMS, Clerk By R S Zimmerman Deputy Clerk MOORE & FARRAHER PACIFIC MUTUAL BUILDING, LOS ANGELES ATTORNEYS FOR PETITIONER

IN THE DISTRICT COURT OF THE UNITED STATES SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION

---

|                             |   |             |
|-----------------------------|---|-------------|
| WILLIAM BRAWNER HET-        | ) |             |
| FIELD,                      | ) |             |
|                             | ) | Petitioner, |
|                             | ) | -vs-        |
| E. H. BARBER, United States | ) | Respondent. |
| Naval Disbursing Officer,   | ) |             |
|                             | ) |             |

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ALTERNATIVE WRIT OF MANDAMUS

UNITED STATES TO E. H. BARBER, UNITED STATES NAVAL DISBURSING OFFICER OF THE ELEVENTH NAVAL DISTRICT OF CALIFORNIA:

WHEREAS it appears from the petition of William Brawner Hetfield, this day filed, that he is a duly commissioned and acting Lieutenant Commander of the United States Navy with headquarters within said Eleventh Naval District, and that as such Naval Officer said petitioner is entitled to receive as salary from April 1, 1924, to September 15, 1924, both dates inclusive, monthly, the sum of Three Hundred Sixty-five Dollars and Seventy-five cents (\$365.75), but that

you, as Disbursing Officer of the said Naval District, have failed and refused to pay said salary for said period, except eighty (80%) per cent thereof, and that you have, after demand on the part of said petitioner, refused to pay petitioner the remaining twenty (20%) per cent of his salary for said period;

NOW THEREFORE, you are commanded to forthwith pay to said petitioner, William Brawner Hetfield, the said twenty (20%) per cent of his salary withheld as in the petition alleged, or to appear before this Court and the Southern Division hereof, on the 13th day of October, 1924, at 10 A M and show cause, if any you have, why you should not pay said salary to said petitioner.

WITNESS the Honorable Paul J. McCormick, Judge of the District Court of the United States for the Southern District of California, Southern Division, at Los Angeles in said District the 30th day of September, 1924.

CHAS. N. WILLIAMS

---

CLERK OF THE DISTRICT COURT OF  
THE UNITED STATES FOR THE  
SOUTHERN DISTRICT OF CALIFOR-  
NIA.

(SEAL)

R S Zimmerman

Deputy

Form No. 282.

RETURN ON SERVICE OF WRIT.

UNITED STATES OF AMERICA, )  
 ) ss:  
 Sou District of Calif. )

I hereby certify and return that I served the annexed Petition for Writ of Mandamus, Order granting alternative Writ writ of Mandamus and Alternative Writ of Mandamus on the therein-named E. H. Barber, United States Naval Disbursing Officer, by handing to and leaving a true and correct copy thereof with the said E. H. Barber, United States Naval Disbursing Officer, personally at San Diego, California in said District on the First day of October, 1924., A. D. 191

A. C. Sittel,

\_\_\_\_\_  
 U. S. Marshal.  
 By R. F. Gusweiler

\_\_\_\_\_  
Deputy.

(ENDORSED)

Marshal's Civil Docket No. 6156 IN THE DISTRICT COURT OF THE UNITED STATES SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION I 13 M WILLIAM BRAWNER HETFIELD, Petitioner -vs- E. H. BARBER, United States Naval Disbursing Officer Respondent. ALTERNATIVE WRIT OF MANDAMUS FILED OCT 3 1924 CHAS. N. WILLIAMS, Clerk By R S Zimmerman Deputy Clerk MOORE & FARRAHER PACIFIC MUTUAL BUILDING, Los Angeles Attorneys for Petitioner

IN THE DISTRICT COURT OF THE UNITED  
STATES IN AND FOR THE SOUTHERN  
DISTRICT OF CALIFORNIA, SOUTH-  
ERN DIVISION.

|                             |   |                |
|-----------------------------|---|----------------|
| WILLIAM BRAWNER HET-        | ) |                |
| FIELD,                      | ) |                |
|                             | ) | No. I-13-M Eq. |
| Petitioner,                 | ) | MOTION TO      |
| vs.                         | ) | DISMISS.       |
| E. H. BARBER, United States | ) |                |
| Naval Disbursing Officer,   | ) |                |
| Respondent.                 | ) |                |

Comes now E. H. BARBER, Naval Disbursing Officer of the Eleventh Naval District, respondent herein, and moves to dismiss the above entitled action upon the ground that this court has no jurisdiction thereof.

Dated this 20th day of October, 1924.

Joseph C. Burke

---

United States Attorney  
O. R. McGuire

---

Special Assistant to  
the Attorney General.

Service by copy this 20th day of October 1924

Moore & Farraher

Attys for Petitioner

(ENDORSED)

No. I-13-M Eq. IN THE District COURT OF THE UNITED STATES FOR THE Southern District of California Southern Division WILLIAM BRAWNER HETFIELD, Petitioner, vs. E. H. BARBER,

United States Naval Disbursing Officer, Respondent.  
MOTION TO DISMISS. FILED OCT 20 1924  
CHAS. N. WILLIAMS, Clerk By Louis J. Somers  
Deputy Clerk

At a stated term, to wit: The July Term, A. D. 1924, of the District Court of the United States of America, within and for the Southern Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Friday the 28th day of November, in the year of Our Lord one thousand nine hundred and twenty-four.

Present:

The Honorable PAUL J. McCORMICK, District  
Judge.

|                            |   |                 |
|----------------------------|---|-----------------|
| William Brawner Hetfield,  | ) |                 |
| Plaintiff                  | ) |                 |
| vs.                        | ) | No. I-13 M. Eq. |
| E. H. Barber United States | ) |                 |
| Naval Disbursing Officer,  | ) |                 |
| Defendant                  | ) |                 |

This cause having been heretofore submitted to the court, it is by the court ordered at this time that respondent's motion to dismiss be and the same is hereby denied; and it is further ordered that a peremptory writ of mandamus issue as prayed.

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION.

|                         |   |                        |
|-------------------------|---|------------------------|
| WILLIAM BRAWNER         | ) |                        |
| HETFIELD,               | ) |                        |
| Petitioner,             | ) | No. I-13-M. In Equity. |
| vs.                     | ) |                        |
| E. H. BARBER, United    | ) | MEMORANDUM             |
| States Naval Disbursing | ) | OPINION.               |
| Officer,                | ) |                        |
| Respondent.             | ) |                        |

: : : : : : : : : : : : : : : : : : : : : : : : : : : :  
 Moore and Farraher, of Los Angeles, California, for the Petitioner. Joseph C. Burke, Esq., United States Attorney, and O. R. McGuire, Special Assistant to the Attorney General, for the Respondent.  
 : : : : : : : : : : : : : : : : : : : : : : : : : : :

The Petitioner, Hetfield, a duly commissioned Lieutenant Commander of the United States Navy, in active service, asks for a Writ of Mandamus directed to Respondent, Barber, United States Naval Disbursing Officer, commanding said disbursing officer to pay to Hetfield certain amounts of salary withheld from said Hetfield by the disbursing officer under orders of the Secretary of the Navy and the Comptroller General of the United States.

The salary of Hetfield which is definitely fixed by statute is made payable monthly in the sum of \$365.75. The Respondent is now retaining and refusing to pay over to the Petitioner twenty per cent of the salary due Petitioner from April 1st, 1924, to September 15th,

1924, amounting in the aggregate to \$402.35. The retention and withholding of this amount is made because it is asserted by Respondent and the Comptroller General that Hetfield has been erroneously paid the sum of \$2870.71 from the Treasury of the United States on account of alleged dependency allowances concerning his mother from April 22nd, 1919, to March 31st, 1922.

It appears that although at one time it had been determined and decided by the Government that Hetfield was entitled to said dependency allowances, later, upon an attempted review by the authorities, it was held by them that the allowances were not warranted and were illegally made.

The Respondent has appeared herein pursuant to the Alternative Writ of Mandamus and has moved to dismiss this entire proceeding upon the ground that this Court has no jurisdiction thereof. Respondent further contends that Mandamus is not available or appropriate to Petitioner under the facts and circumstances hereof.

I find no merit in Respondent's contentions. This proceeding is justified and authorized under the Judicial Code of the United States.

The salary of a Naval Officer being fixed by law at a definite and certain amount the duty of Respondent in paying and disbursing such salary to an officer is purely ministerial. His duty is plain in such cases and in the performance of his duty he is neither called upon nor permitted to exercise discretion or latitude as to what portion of the officer's salary he will pay or

withhold. He must pay the whole of the salary to the officer. If the Government as an entity has any legal and valid claim against the Petitioner it can pursue such by the regular legal processes and procedure, but neither the Respondent nor the Comptroller General nor the Secretary of the Navy nor any other agent of the Government can offset Government claims by withholding or retaining any portion of the statutory salary due to a Naval Officer. As long as there is money in the Treasury of the United States to pay the salary of a Naval Officer the statutory salary must be paid when due and in such event the disbursing agents have no room for the exercise of discretion with reference to the amount which they will pay as salary to the Naval Officer, and whenever it appears that strict compliance with the law is not observed by the governmental disbursing agencies Mandamus will issue to require and to command them to perform their duty.

The foregoing is not only sound in principle but finds support in the decisions of the Federal Courts. The Supreme Court of the United States has so ruled in confirming the case of *Smith vs. Jackson*, 241 Fed. 746, where the following pertinent language is used: "Every executive officer whose duty is plainly devolved upon him by statute, might refuse to perform it, and when his refusal is brought before the Court he might successfully plead that the performance of his duty involved an interpretation of the statute by him and therefore it was not ministerial, and the Court would on that account be powerless to give relief. In this case we think that proper construction of the statute is clear and the salary should have been paid."



The foregoing case grew out of an effort upon the part of certain governmental agents to retain a portion of the salary of a Judge of the Canal Zone in payment of rental of quarters occupied by the Judge. The ruling was that the Judge's salary was fixed by statute and could not be checked against and that the function of paying and disbursing the statutory salary to the Judge was a mere ministerial act wherein the disbursing agent had no discretion or latitude as to the amount which he should pay to the Judge.

There have been cases cited by Respondent but all of them are in my opinion clearly distinguishable from the case at bar, as all of such cited cases required some exercise of judgment or discretion upon the part of the governmental agent against whom Mandamus or Injunction was sought. They involved an interpretation by the disbursing officer of some statute. No such situation exists here.

The precise question submitted for decision in this proceeding has been before two District Courts of the United States and also before the Attorney General of the United States and all of these authorities have uniformly held that the Comptroller General and the disbursing officers of the Navy are acting beyond their powers in endeavoring to check against the salary of Naval Officers. *Dillon vs. Gross*, 299 Fed. 851- - - *Howe vs. Elliott*, 300 Fed. 243 - - - 20 Op. Atty. Gen. 626.

Upon the authorities herein referred to and for the reasons hereinabove assigned the Respondent's motion to dismiss is denied, and the Petitioner is entitled to

the relief as prayed. Counsel for Petitioner will prepare and present an appropriate order pursuant hereto.

PAUL J. MCCORMICK

United States District Judge.

Dated this 28th day of November, 1924.

(ENDORSED)

No. I-13-M. In Equity. IN THE DISTRICT COURT OF THE UNITED STATES FOR THE Southern District of California. Southern Division WILLIAM BRAUNER HETFIELD, PETITIONER, vs. E. H. BARBER, United States Naval Disbursing Officer, RESPONDENT. MEMORANDUM OPINION Filed November 28th, 1924 Chas. N. Williams, Clerk By Louis J. Somers, Deputy.

IN THE DISTRICT COURT OF THE UNITED STATES SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION.

|                         |   |                     |
|-------------------------|---|---------------------|
| WILLIAM BRAUNER         | ) |                     |
| HETFIELD,               | ) | No. I-13-M. Equity. |
| Petitioner,             | ) |                     |
| - vs -                  | ) | PEREMPTORY          |
| E. H. BARBER, United    | ) | WRIT OF             |
| States Naval Disbursing | ) | MANDAMUS            |
| Officer,                | ) |                     |
| Respondent.             | ) |                     |

TO E. H. BARBER, DISBURSING OFFICER OF THE UNITED STATES NAVY FOR THE ELEVENTH NAVAL DISTRICT, SAN DIEGO, CALIFORNIA, GREETING:

WHEREAS, on the 24th day of September, 1924, William Brawner Hetfield, a duly commissioned Lieutenant Commander of the United States Navy, filed his petition in this court praying for a Writ of Mandamus, which petition is in words and figures as follows, to wit:

IN THE DISTRICT COURT OF THE UNITED STATES SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION

|                         |   |              |
|-------------------------|---|--------------|
| WILLIAM BRAWNER         | ) |              |
| HETFIELD,               | ) |              |
| Petitioner,             | ) | PETITION FOR |
| - vs -                  | ) | WRIT OF      |
| E. H. BARBER, United    | ) | MANDAMUS     |
| States Naval Disbursing | ) |              |
| Officer,                | ) |              |
| Respondent.             | ) |              |

TO THE HONORABLE JUDGE OF THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION:

The petition of William Brawner Hetfield respectfully shows:

I.

That petitioner is now and at all times herein mentioned was a citizen of the United States and a resident of this Judicial District, and a duly commissioned and acting Lieutenant Commander of the United States Navy.

## II.

That E. H. Barber is the Disbursing Officer of the United States Navy for the Eleventh Naval District, which includes the City and County of Los Angeles, California, with his office at San Diego, California.

## III.

That as such officer of the United States Navy, petitioner is entitled to receive as pay or salary, independent of any claims for dependency of relatives, the monthly sum of Three Hundred Sixty five and 75/100 (\$365.75) Dollars.

## IV.

That on May 22, 1924, petitioner was informed in writing by the Comptroller General, through his solicitor, that on March 17, 1924, it had been found that petitioner had erroneously been paid the sum of Two Thousand Eight Hundred Seventy and 71/100 (\$2870.71) Dollars, for what was termed "alleged dependency by you (petitioner) of your (petitioner's) Mother for a period from April 22, 1919 to March 31, 1922," and said communication contained a demand upon petitioner for the payment of said sum to the United States government; that petitioner refused to pay said sum on the ground that the dependency allowances referred to in said communication had been applied for in good faith by petitioner and been approved by the proper accounting officers and properly paid to petitioner.

## V.

That thereafter said E. H. Barber, Disbursing Officer, refused to pay to petitioner any portion of his

pay or compensation as Naval Officer, and has refused to pay the dependency allowances for which petitioner filed affidavits in proper form.

## VI.

That said Disbursing Officer gave as his reason for refusing to pay petitioner his compensation fixed by the United States Statute, that petitioner was indebted to the United States in the amount of Two Thousand Eight Hundred Seventy and  $71/100$  (\$2870.71) Dollars, and that no money is to be paid to petitioner on account of his compensation as such Naval Officer until he had either paid the said amount, or the compensation withheld had offset said amount; that said condition continued until the 15th day of August, 1924, when said Disbursing Officer paid eighty (80%) per cent of the compensation earned by petitioner, as fixed by the United States Statutes, from April 1st to said August 15, 1924, but said Disbursing Officer refused to pay the remaining twenty (20%) per cent to petitioner.

## . VII.

That the said twenty (20%) per cent so withheld by said Disbursing Officer from April 1, 1924 to September 15, 1924, amounts to Four Hundred Two and  $35/100$  (\$402.35) Dollars, which said amount petitioner is now entitled to receive.

## VIII.

That petitioner is informed and believes, and therefore alleges, that unless by this Court compelled to pay the full salary and compensation of petitioner hereafter, said Disbursing Officer will continue to withhold twenty (20%) per cent thereof.

## IX.

That petitioner has frequently demanded of said Disbursing Officer payment of the sum so withheld, but has on each occasion met with refusal of said officer.

## X.

That the ordinary legal remedies do not afford petitioner adequate relief, and that petitioner has not heretofore sought from this Court, or any other Court, a Writ of Mandamus in this cause.

WHEREFORE, petitioner prays that the Judge of this court order the issuance of an Alternative Writ of Mandamus demanding and directing the said E. H. Barber, United States Naval Disbursing Officer, Eleventh Naval District, to forthwith pay to petitioner the amount of Four Hundred and Two and 35/100 (\$402.35) Dollars, with interest thereon, and costs, said amount being twenty (20%) per cent of petitioner's pay as Lieutenant Commander of the United States Navy, from the 1st day of April, 1924, to the 15th day of September, 1924, and to hereafter pay to petitioner on each and every payday thereafter, the full amount of the petitioner's compensation as fixed by the United States Statute, or to appear before this Court on the day to be named in said Writ to show cause, if any there be, why a peremptory writ of mandamus should not issue to compel the said payments.

And for such further and general relief as petitioner may be entitled to in the premises.

MOORE & FARRAHER

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Attorneys for Petitioner

(Verification)

and,

WHEREAS, on the 30th day of September, 1924, upon the order of this Court, an Alternative Writ of Mandamus was issued herein, returnable before me on the 13th day of October, 1924, and thereupon continued to the 27th day of October, 1924, at which time hearing was had thereon; and it appearing at said hearing that you, acting as the disbursing officer for the United States Navy, duly authorized to pay the salary of petitioner, the said William Brawner Hetfield, as fixed by statute, are now retaining and refusing to pay over twenty (20%) per cent of the salary due petitioner from April 1, 1924 to September 15, 1924, in the aggregate sum of Four Hundred and Two and 35/100 (\$402.35) Dollars; and it further appearing that such withholding by you of any part of petitioner's salary, as fixed by law, is not warranted and was illegally made;

NOW THEREFORE, I DO COMMAND YOU, that you, the said E. H. Barber, to pay to petitioner, the said William Brawner Hetfield, the salary withheld in the aggregate amount of Four Hundred and Two and 35/100 (\$402.35) Dollars, with interest thereon, said amount being twenty (20%) per cent of petitioner's pay as Lieutenant Commander of the

United States Navy from April 1, 1924 to September 15, 1924, together with any subsequent withholding of petitioner's salary as fixed by law, and you are further commanded to make return to this Writ on the 15th day of December, 1924, showing obedience thereto.

Dated this 2nd day of December, 1924.

Paul J. McCormick

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Judge of the District Court of the  
United States.

Form No. 282.

RETURN ON SERVICE OF WRIT.

United States of America, )  
                                                          ) ss:  
Sou District of Calif       )

I hereby certify and return that I served the annexed peremptory Writ of Mandamus on the therein-named E. H. Barber United States Naval Disbursing Officer by handing to and leaving a true and correct copy thereof with E. H. Barber personally at San Diego Cal in said District on the Fourth day of December, A. D. 1924.

A. C. Sittel

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U. S. Marshal.

By R. F. Gusweiler

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Deputy.

(ENDORSED)

Marshal's Civil Docket No. 6156. No. I-13-M.  
Equity. IN THE DISTRICT COURT OF THE



UNITED STATES SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION WILLIAM BRAWNER HETFIELD, Petitioner, - vs - E. H. BARBER, United States Naval Disbursing Officer, Respondent. PEREMPTORY WRIT OF MANDAMUS FILED DEC 12 1924 CHAS. N. WILLIAMS, Clerk By L. J. Cordes Deputy Clerk MOORE & FARRAHER PACIFIC MUTUAL BUILDING, Los Angeles ATTORNEYS FOR PETITIONER

Receipt of a copy of the within Peremptory Writ of Mandamus is hereby acknowledged this 3rd day of December, 1924.

UNITED STATES DISTRICT ATTORNEY

By Robert B. Camarillo.

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Receipt of a copy of the within Peremptory Writ of Mandamus is hereby acknowledged on this fourth day of December, 1924.

E. H. Barber,

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Respondent.

IN THE DISTRICT COURT OF THE UNITED  
STATES IN AND FOR THE SOUTHERN  
DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION

|                         |   |                   |
|-------------------------|---|-------------------|
| WILLIAM BRAWNER         | ) |                   |
| HETFIELD,               | ) |                   |
| Petitioner,             | ) | No. I-13-M Equity |
| vs.                     | ) |                   |
| E. H. BARBER, United    | ) | PETITION FOR      |
| States Naval Disbursing | ) | APPEAL            |
| Officer,                | ) |                   |
| Respondent.             | ) |                   |

TO THE HONORABLE PAUL J. McCORMICK,  
UNITED STATES DISTRICT JUDGE FOR  
THE SOUTHERN DISTRICT OF CALIFOR-  
NIA:

The above named respondent, E. H. BARBER, United States Naval Disbursing Officer, feeling himself aggrieved by the Order made and entered in this cause on the 28th day of November, 1924, and by the Peremptory Writ of Mandamus issued pursuant thereto, on the 2nd day of December, 1924, does hereby appeal from said Order and Decree to the Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the Assignment of Errors which is filed herewith, and he prays that his Appeal be allowed and that Citation issue, as provided by law, and that a transcript of the record, proceedings and papers upon which said Decree was based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco, California;

And your respondent and petitioner further represents that he is the United States Naval Disbursing Officer at San Diego, California, and that said Decree affects directly the payment of moneys of the United States of America, and desiring to supersede the execution of the Decree, Order and Peremptory Writ of Mandamus, petitioner hereby prays that with the allowance of the Appeal, a supersedeas be issued without bond.

JOSEPH C. BURKE  
JOSEPH C. BURKE  
United States Attorney

J. Edwin Simpson  
J. E. SIMPSON  
Assistant United States Attorney

O. R. McGuire  
O. R. McGUIRE  
Special Assistant to the Attorney General

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Solicitors for Respondent

Dated this 11th day  
of December, 1924.

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(ENDORSED):

No. I-13-M Equity IN THE DISTRICT COURT OF THE UNITED STATES FOR THE Southern District of California Southern Division WILLIAM BRAWNER HETFIELD, Petitioner vs. E. H. BARBER, United States Naval Disbursing Officer, Respondent PETITION FOR APPEAL FILED DEC 12, 1924 CHAS. N. WILLIAMS, Clerk By R S Zimmerman Deputy Clerk. Service of a Copy of the Within Petition for Appeal acknowledged December 12, 1924 Moore & Farragher E. D. Moore Attorneys for the Petitioner and Appellee.

IN THE DISTRICT COURT OF THE UNITED  
STATES IN AND FOR THE SOUTHERN  
DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION

|                         |   |                   |
|-------------------------|---|-------------------|
| WILLIAM BRAWNER         | ) |                   |
| HETFIELD,               | ) |                   |
| Petitioner,             | ) | No. I-13-M Equity |
| vs.                     | ) |                   |
| E. H. BARBER, United    | ) | ASSIGNMENT OF     |
| States Naval Disbursing | ) | ERRORS            |
| Officer,                | ) |                   |
| Respondent.             | ) |                   |

Now comes the respondent in the above entitled cause and files the following Assignment of Errors upon which he will rely in his prosecution of the Appeal in the above entitled cause, from the Order made by the Honorable Court on the 28th day of November, 1924, and from the Peremptory Writ of Mandamus issued pursuant thereto on the 2nd day of December, 1924.

I.

That the United States District Court for the Southern District of California erred in denying respondent's motion to dismiss the Action for the reason that the court had no jurisdiction thereof.

II.

WHEREFORE respondent prays that the Order of the District Court for the Southern District of California may be reversed, and said court directed to dismiss the Bill and vacate its order decreeing that a Peremptory Writ of Mandamus issue, and recalling

the Peremptory Writ of Mandamus issued pursuant to said decree.

Joseph C. Burke

JOSEPH C. BURKE

United States Attorney

J. Edwin Simpson

J. E. SIMPSON

Assistant United States Attorney

O. R. McGuire

O. R. McGUIRE

Special Assistant to the Attorney General

---

Solicitors for Respondent

(ENDORSED):

No. I-13-M Equity IN THE DISTRICT COURT OF THE UNITED STATES FOR THE Southern District of California Southern Division WILLIAM BRAWNER HETFIELD, Petitioner vs. E. H. BARBER, United States Naval Disbursing Officer Respondent ASSIGNMENT OF ERRORS FILED DEC 12 1924 CHAS. N. WILLIAMS, Clerk By R S Zimmerman, Deputy Clerk. Service of the within Assignment of Errors and receipt of a copy thereof is acknowledged this 12th day of December 1924 Moore & Farraher E. D. Moore.

IN THE DISTRICT COURT OF THE UNITED  
STATES IN AND FOR THE SOUTHERN  
DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION

|                         |   |                   |
|-------------------------|---|-------------------|
| WILLIAM BRAWNER         | ) |                   |
| HETFIELD,               | ) |                   |
| Petitioner,             | ) | No. I-13-M Equity |
| vs.                     | ) |                   |
| E. H. BARBER, United    | ) | ORDER ALLOWING    |
| States Naval Disbursing | ) | APPEAL            |
| Officer,                | ) |                   |
| Respondent.             | ) |                   |

On motion of J. E. Simpson, one of the solicitors and counsel for respondent in the above entitled cause, it is hereby ordered that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the Order and Decree entered herein on the 28th day of November, 1924, be and the same is hereby allowed, and that a certified transcript of the record be forthwith transmitted to said United States Circuit Court of Appeals for the Ninth Circuit.

It is further ordered that the Appeal shall operate as a supersedeas and that no bond shall be required. Dated this 12th day of December, 1924.

Paul J. McCormick

United States District Judge

APPROVED AS TO FORM  
as provided in Rule 45

Moore and Farraher

E. D. Moore

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Solicitor for the Petitioner

(ENDORSED):

No. I-13-M Equity IN THE DISTRICT COURT OF THE UNITED STATES FOR THE Southern District of California Southern Division WILLIAM BRAWNER HETFIELD Petitioner, vs. E. H. BARBER, United States Naval Disbursing Officer, Respondent. ORDER ALLOWING APPEAL FILED DEC 12 1924 CHAS. N. WILLIAMS, Clerk By R S. Zimmerman, Deputy Clerk. Service of the within "Order Allowing Appeal" and receipt of a copy thereof is acknowledged this 12th day of December. Moore & Farraher E. D. Moore Attorneys for Hetfield.

UNITED STATES OF AMERICA  
DISTRICT COURT OF THE UNITED STATES  
Southern District of California  
Southern Division.

WILLIAM BRAWNER HETFIELD ) Clerk's Office  
                                  ) Petitioner and Appellee )  
                                  ) vs. ) No. I-13-M  
E. H. BARBER ) Equity  
                                  ) Respondent and Appellant. ) Praecipe

TO THE CLERK OF SAID COURT:

Sir:

Please issue certified copy of Transcript of Record for use in appeal to Circuit Court of Appeals, 9th Circuit, in the above entitled matter, including therein the following:

1. Petition for Writ of Mandamus
2. Order allowing Alternative Writ of Mandamus
3. Alternative Writ of Mandamus
4. Motion to Dismiss

5. Order of Court Denying motion to dismiss.
6. Opinion of Court.
7. Order for peremptory Writ of Mandamus
8. Peremptory Writ of Mandamus
9. Petition for Appeal
10. Order allowing Appeal
11. Assignment of Errors.
12. Citation.

J. Edwin Simpson  
J. Edwin Simpson,  
Assistant United States Attorney.

Copy received Dec. 15/1924

Moore & Farraher

E. D. Moore

(ENDORSED):

No. I-13-M U. S. DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA. Southern Division William Brawner Hetfield vs. E. H. Barber, PRAECIPE FOR Transcript of Record FILED DEC 18 1924 CHAS. N. WILLIAMS, Clerk By R. S. Zimmerman Deputy Clerk



IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION

WILLIAM BRAWNER )  
HETFIELD, )  
Petitioner, )  
vs. )  
E. H. BARBER, United )  
States Naval Disbursing )  
Officer, )  
Respondent. )

CLERK'S CERTIFICATE.

I, CHAS. N. WILLIAMS, Clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 34 pages, numbered from 1 to 34 inclusive, to be the Transcript of Record on Appeal in the above entitled cause, as printed by the appellant, and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the citation, petition for writ of mandamus, order allowing alternative writ of mandamus, writ of mandamus, motion to dismiss, order of court denying motion to dismiss, opinion of the court, order for peremptory writ of mandamus, peremptory writ of mandamus, assignment of errors, petition for appeal, order allowing appeal for praecipe.

I DO FURTHER CERTIFY that the fees of the Clerk for comparing, correcting and certifying the foregoing Record on appeal amount to

and that said amount has been paid me by the appellant herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of California, Southern Division, this            day of December, in the year of our Lord One Thousand Nine Hundred and Twenty-four, and of our Independence the One Hundred and Forty-ninth.

CHAS. N. WILLIAMS,  
Clerk of the District Court of the  
United States of America, in and  
for the Southern District of Cali-  
fornia.

By

Deputy.